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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,179	02/14/2002	Arthur M. Shand	60027.0453/BS00177	7280
39262 7590 05/04/2007 MERCHANT & GOULD BELLSOUTH CORPORATION P.O. BOX 2903 MINNEAPOLIS, MN 55402			EXAMINER VO, HIEN XUAN	
			ART UNIT 2863	PAPER NUMBER
			MAIL DATE 05/04/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/075,179

Applicant(s)

SHAND, ARTHUR M.

Examiner

Hien X. Vo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2007.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6,8-20,22,25,26 and 30 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,3-6,8-20,22,25,26 and 30 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 14 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 22, 25-26, 30 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims 26, 30 are directed to a judicial exception, as such, pursuant to the Interim guidelines on Patent Eligible Subject Matter (MPEP 2106), the claims must have either physical transformation and/or a useful, concrete and tangible result. The claims fail to include transformation from one physical state to another. Although, the claim appear useful and concrete, there does not appear to be a tangible result claimed. Merely, requesting information associated with the connectivity status of an element of the WAP network; receiving the requested information from the element of the WAP network; and analyzing the received information in a predetermined sequence to emulate a sequence of a process flow of signals through the element of the WAP network, for diagnosis of the WAP network element would not appear to be sufficient to constitute a tangible result, since the outcome of analyzing the received information in a predetermined sequence to emulate a sequence of a process flow of signals through the element of the WAP network, for diagnosis of the WAP network element step has not been used in a disclosed practical application nor made available in such a manner that its usefulness

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in a disclosed practical application can be realized. As such, the subject matter of the claims is not patent eligible.

The claim 22, 25 are drawn to a computer program per se. A computer program per se is abstract instructions. Therefor, a computer program is not a physical thing (product) nor a process as they are not "acts" being performed. As such these claims are not directed to one of the statutory categories of invention (see MPEP 2106.01), but are directed to nonstatutory functional descriptive material.

It is noted that computer program embodied on a computer readable medium or other structure, which would permit the functionality of the program to be realized, would be directed to a product and be within a statutory category of invention, so long as the computer readable medium is not disclosed as non statutory subject matter per se (signals or carrier waves).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-6, 8-20, 22, 25-26, 30 rejected under 35 U.S.C. 102(b) as being anticipated by Zellner et al. (U.S. Patent No. 6,539,384).

With respect to claim 1, Zellner et al. disclose a browser on test equipment including a portable WAP-enabled diagnostic device for troubleshooting a WAP network having a plurality of elements, the diagnostic device (see e.g. abstract), comprising:

a housing (see e.g. Figs. 1-2 and col. 2, lines 44-46); a processor located within the housing (see e.g. fig. 3, item 46, col. 2, line 46), wherein the processor includes:

a microbrowser module (see e.g. Fig. 3, item 28) configured for communicating with an external source of information including a WAP network undergoing troubleshooting (see e.g. fig. 4); and a diagnostic module configured for analyzing information associated with elements of the WAP network in a predetermined sequence configured to emulate a sequence of a process flow of signals through the elements of the WAP network undergoing diagnosis by the portable diagnostic device (see e.g. col. 2, lines 44-58); an input device located on the housing and coupled to the processor (see e.g. col. 2, lines 48-63); and a display screen located on the housing and coupled to the processor to display information pertaining to operating parameters of the WAP network undergoing diagnoses (see e.g. Fig. 2 and col. 5, lines 5-14).

With respect to claims 3-6, Zellner et al. disclose the invention as claimed including the WAP network includes a mobile communication network in selective communication with a data network configured for communication with the mobile communication network and the internet, and the microbrowser is operative for communication with the WAP network (see e.g. col. 5, lines 49-55), the mobile communication network includes a device selected from the group of devices consisting of a base substation, a mobile switching center, an interworking function, and

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a remote access server (see e.g. col. 13, lines 39-57), the data network includes a device selected from the group of devices consisting of an internet protocol router, a remote access dial-in user services server, a WAP server, an authentication server, and a domain name server (see e.g. col. 13), the external source of information includes a server connected to the Internet (see e.g. Fig. 4).

With respect to claims 8-20, Zellner et al. disclose the invention as claimed including input device includes an input device selected from the group consisting of a keypad, a mouse, a trackball, and a touch screen (see e.g. col. 4, lines 53-61), a display screen selected from the group consisting of an LCD display screen, a passive matrix display screen, and a TFT active matrix display screen (see e.g. col. 5, lines 5-14), a power source located within the housing and coupled to the processor (see e.g. col. 9, lines 44-46), a radio frequency transceiver located within the housing and coupled to the processor (see e.g. Fig. 6, item 86), the radio frequency transceiver includes an antenna originating within the housing and protruding therefrom (see e.g. Figs. 5-6, item 76), a modem located within the housing and coupled to the processor (see e.g. Fig. 6, item 84), a speaker, microphone located within the housing and coupled to the processor (see e.g. Fig. 6, items 35-37), a memory device located within the housing and coupled to the processor (see e.g. Fig. 6, item 42), the memory device includes a volatile memory, a random access memory, a non-volatile memory, an electrically erasable programmable read only memory (see e.g. col. 8, lines 40-44).

With respect to claims 22, 25-26, 30, Zellner et al. disclose the invention as claimed including request information from an external source associated with an

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element of a WAP network (see e.g. abstract); receive the requested information from the external source element of the WAP network associated with the (see e.g. col. 5, lines 48-65); and analyze the received information in a predetermined sequence to emulate a process flow of signals through elements of the WAP network for diagnosis of the WAP network (see e.g. col. 15, lines 10-28), the receiving the requested information from an element of the WAP network includes receiving the requested information from an element of the WAP network via a server connected to the internet (see e.g. col. 14, lines 43-58).

4. Applicant's arguments filed 02/16/07 have been fully considered but they are not persuasive. Because, the prior art still discloses the certain features of claims' invention.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hien X. Vo whose telephone number is (571) 272-2282. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hien Vo.  
04/29/07

  
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